

TORT LAW REVIEW

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CASE NOTE

- Mental Impairment and the Objective Approach in Negligence: Spearman v Royal United Bath Hospitals** – *Dr David Pearce* 57

ARTICLES

- A Corrective Justice Justification for Considering the Response of the Hypothetical Person of an “Ordinary Level of Susceptibility” when Assessing Reasonable Foreseeability in Cases involving Negligently Inflicted Psychiatric Injury** – *Martin Allcock*

The law has long been concerned with limiting recovery for pure psychiatric injury in negligence in order to prevent liability to plaintiffs who are unusually susceptible to this type of injury. The justifications provided by courts for this concern have often centred on the idea that holding a defendant liable to such a plaintiff will be unreasonable. However, there is a gap in the reasoning of the courts and in the scholarly literature as to the potential theoretical justifications for measuring the reasonableness of the defendant’s conduct against the effect of that conduct on the hypothetical person of an “ordinary level of susceptibility”. This article attempts to address this gap, arguing that measuring the reasonableness of the defendant’s conduct in this way in relation to an overriding test of reasonable foreseeability can be explained pursuant to Allan Beever’s corrective justice theory of negligence. 60

- Highway Immunity and the Victimisation of Australian Law: Fact or Fiction?** – *Mark Lunney*

A strand of Australian judicial and academic writing has criticised the application of the common law highway immunity rule in negligence cases against road authorities, arguing that it was an English rule foisted by precedent on a country for which it may not have been suitable. Through a detailed analysis of Australian cases from the late 19th century until the affirmation of the rule by the High Court of Australia in 1936, this article challenges the idea that the highway immunity was an unwanted addition to Australian tort law. Whether an authority should be liable for nonfeasance in respect of roads was a contested issue, and by dismissing it simply as an anachronistic English rule, the achievements of Australian judges in attempting to make sense of a rule notoriously difficult in application are lost. 83

- On Not Trespassing on Trespass: In Defence of Separate Torts of Trespass to the Person** – *JA Devereux*

An article recently published in the Tort Law Review argues that separate torts of trespass to the person are no longer necessary, given the growth and development of the law of negligence. This article argues that there is a continuing role for trespass to the person, and that the interests protected by the tort of trespass are not adequately subsumed within negligence. This article agrees with the previously published views as to the historical development of the tort of trespass, but suggests that, whatever convergence is happening

between the torts of trespass and negligence, there continue to be distinct elements of trespass unknown to negligence. 98

Neural Interface Devices and Negligence – *Scott Kiel-Chisholm*

Neural interface devices that replace human biological parts are now becoming available to consumers. A negligence action has yet to be commenced against a person with a neural interface device in circumstances where harm to another’s property or person has occurred. This article considers how the current law of negligence, the combination of common law and legislation, will be applied and concludes that the law may need to be adapted or modified. In particular, breach of the duty of care may recognise a standard of care different from that of an individual without a neural interface device while factual causation will experience difficulties. The courts will need to decide negligence proceedings where mind and machine are merged through the integration of a neural interface device and a human being, circumstances the courts have not considered before. 104